

**CHARLOTTE COUNTY PLANNING AND ZONING BOARD**  
**Administration Center, 18500 Murdock Circle, Room 119,**  
**Port Charlotte, Florida**  
**Minutes of Regular Meeting**  
**April 9, 2012, 1:30 p.m.**

**Call to Order**

**Chair Hess** called the meeting to order at 1:28 p.m. and upon the Secretary calling the roll, it was noted a quorum was present.

**Roll Call**

**PRESENT**

Paula Hess  
Michael Gravesen  
Michael Brown  
James Marshall  
Brenda Bossman

**ABSENT**

**ATTENDING**

Derek Rooney, Assistant County Attorney  
Gayle Moore, Recording Secretary

**APPROVAL OF MINUTES**

The minutes of March 12, 2012 were approved as circulated.

**ANNOUNCEMENTS**

The oath was administered, whereupon the meeting commenced.

**PETITIONS**

**SV-12-02-01**

**Legislative**

**Commission District IV**

Susan Whitney has applied to vacate the portion of Gallagher Boulevard that ends at the Myakka River, east of the intersection with Duprell Terrace, a total of 0.10 acres, more or less, as recorded in Plat Book 5, Pages 68-A through 68-E, located in Section 32, Township 40 South, Range 21 East, in Commission District IV.

**Staff Presentation**

**Steven Ellis, Planner II**, presented the findings and analysis of the petition with a recommendation of *Denial*, based on the reasons stated in the staff report dated March 19, 2012. He noted there had been a mapping error in the accompanying info packet, where the applicant's home was indicated as the subject property; the subject property is actually a strip of land abutting applicant's property on the northeast. **Mr. Ellis** then discussed the policies of the County's Comprehensive Plan which underlie the department recommendation of denial for this petition. There were also comments in the staff report from the Community Services Department, supporting denial of the petition.

**Questions for Staff**

*None.*

**Applicant's Presentation:**

**Mr. Stephen Whitney**, husband of applicant, spoke in support of the petition, noting that the setback requirements on their property adjacent to Gallagher Blvd., the subject property, impact the design of their intended home. **Mr. Whitney** discussed their building plans, and also indicated, in their desire to be good neighbors, the various things they would offer in terms of maintenance to the existing seawall, in order to make the vacation request amenable to the neighborhood. He also cited privacy and security concerns related to having the general public able to walk that close to his property. **Mr. Whitney** stated that there would be no public hardship as a result of the vacation since the area is immediately adjacent to the Myakka River Regional park, and to the Gulf Cove Park in the general area.

**Chair Hess** asked him to define what the setback would be; **Mr. Whitney** responded that the property abuts two streets (Gallagher and Duprell) which have a 25-foot and a 15-foot setback.

**Chair Hess** asked if he had considered asking for a variance to the set-back; **Mr. Whitney** acknowledged that would help. **Chair Hess** stated that it would reside with the Commissioners to determine whether the access already available to the public would be considered sufficient to make up for the loss of access from the subject parcel. Further discussion ensued on the conditions along the water and the state of the seawall.

**Public Input**

**Mr. Robert Gravatt**, a resident of the area, stated that he agreed with Mr. Whitney; he thought there was a safety issue with people walking out on the seawall and falling off and said that he has knowledge of at least one person getting hurt. **Chair Hess** asked about the amount of usage of the property, whether there was a lot of traffic on the street or people walking along the area; **Mr. Gravatt** replied that there was not a lot. **The Chair** also asked if there was any information about a facility being built here; **Mr. Ellis** responded that the Community Services Department had indicated in their comments they may have a use for the parcel as part of future improvements to the park facilities, e.g., putting a kayak launch there. **Mr. Gravatt** stated the Corps of Engineers would not permit dredging at that spot to accommodate a boat launch; **Mr. Bossman** pointed out that a kayak launch would not require dredging. Further discussion ensued regarding the County's future plans for the property.

**Mr. Ellis** also noted, with regard to the offer of maintenance on the seawall, that as a result of an approved vacation, the property in question (and the seawall which bisects it diagonally) would go half to the petitioner and half to the County (the property owners on either side of the subject property) – so that Mr. Whitney could reasonably only provide maintenance for one half the seawall.

**Mr. Marshall** inquired why the adjacent park land wouldn't be just as suitable for a kayak launch; **Ms. Bossman** responded that this parcel was at the end of a street, which made it ideal. **Mr. Marshall** felt that the seawall would interfere with the task.

**Ms. Sandra Tozzi**, a resident of the area and neighbor of the Whitney property, spoke in support of their petition, based on the liability to the County of people getting hurt, and also on the question of the invasion of privacy and security for the residents. **Chair Hess** noted that residents of this area had bought property located next to public property and should reasonably expect to see the public. **Ms. Tozzi** stated that she understood that the easement was not "viable" and therefore there should be no allowance for people to come by at will.

**Ms. Judy Stark**, resident of the neighborhood, spoke in opposition to the request. She handed out a folder of material to help illustrate her objections; she then discussed the contents of the folder, including the signed petitions objecting to the petition and noting that approval would not be in the best interests of the public. **Ms. Stark** pointed out that the current and previous owners had all purchased the property knowing that the sliver was not 'part of the package'.

In response to a question from the Chair, **Ms. Stark** stated that she lives on a neighboring property, and that she enjoys kayaking in the area. She had also researched the Comprehensive Plan and spoke to the issue of access for all citizens and their guests, and also spoke to the issue of the proposed park development in future. She indicated she had also researched the transfer of density units issue. Finally, she also referred to the denial of a prior request for a vacation in this area.

**Mr. Marc Fluhart**, property owner in the area, spoke and noted that he walks in the area day and night; mentioning the idea of people being able to use the park, he said that there are people out there at night doing scary things. Gallagher is his only access to the water during his walks, and he stated he would object to being prevented from access. He noted that the park is not developed now and who knows when it would be done. In response to a question from the Chair, **Mr. Fluhart** indicated that he has reported the night-time activities to the sheriff, but not much changes. He had no criticism of the Sheriff's office, feeling that they are understaffed.

- **Mr. Marshall** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

### **Discussion**

**Chair Hess** asked Mr. Marshall for his opinion as a resident of the area; **Mr. Marshall** said though he first thought it might be worth doing for the maintenance of the seawall, but he noted that the seawall looks well-kept already, so he could not support it. **Chair Hess** referred to the 'shall not' direction from the comp plan with regard to denying access in the absence of some balancing public benefit, which does not seem to be the case here. **Ms. Bossman** said she could see why the petitioners would want to add to their property since it would greatly increase its value, but she couldn't support it.

**Mr. Gravesen** questioned whether the small parcel in question would actually ever be useful to the park property; he stated that it would not be useful. He stated his belief that the Comprehensive Plan policy regarding vacations of streets with water access is meant to apply where there is no other access; in this case there is 500 feet of access along the shoreline, which is admittedly treed and undeveloped. While he said that the property owner had not made and could not make a good case for the vacation, he said he did think the existing policy oversteps commonsense. **Mr. Brown** says he can see where there's already plenty of access, but that if he were going to agree to the vacation it would have to be for the complete seawall, not part of it.

Further comments were made regarding the issue of liability, and **the Chair** asked Assistant County Attorney Dan Gallagher for his comments on this issue if half the seawall and property were to belong to the County and the other half to a private property owner, asking whether they was a way for the whole vacated parcel to go to just the property owner. **Mr. Gallagher** said that he would defer to Mr. Ellis on that question, but that the County was liable for any property it owns.

**Ms. Bossman** spoke, pointing out that by statute, it is not possible to just give the private property owner the entire seawall, in addition to which, this is public park land that would be given away. **Mr. Brown** stated that if there is a policy that the County does not vacate access to

waterways, and if there is a policy about half the vacated parcel going to owners on each side, and consideration is being given to ignoring one policy, why not just ignore both. **Mr. Marshall** stated he would not be comfortable deviating from a policy which had been set forth by the Commission; the decision to deviate from their own policy is a decision that should be left with the Commissioners.

**Mr. Gravesen** raised an issue about whether such a vacation on a section line somehow voids the rule that says vacated property should go in equal halves to the adjacent property owners. **Mr. Gallagher** noted that traditionally, when a platted or existing road is vacated, the adjoining property owners on the opposite sides will own to the middle of the road.

**Chair Hess** stated her conviction that the matter should be left to the Commissioners to decide; **Mr. Marshall** asked whether this Board can forward the matter to the Commission with no recommendation. **Mr. Gallagher** said that he believed "no recommendation" was acceptable.

**Recommendation**

**Mr. Marshall** moved that application **SV-12-02-01** be forwarded to the Board of County Commissioners *without recommendation*, based on the unanswered questions regarding any possible public benefit and the division of the vacated land, second by **Mr. Brown** and carried by a vote of 4-1, the polling of the Board as follows:

Paula Hess – Aye  
Michael Gravesen – Aye  
Michael Brown – Aye  
James Marshall - Aye  
Brenda Bossman – Nay.

**SV-12-02-02**

**Legislative**

**Commission District II**

Thomas Frey has applied to vacate the portion of Siesta Drive that meets Morningside Drive between Lot 1, Block 204, and Lots 1-3, Block 202, of Tropical Gulf Acres Unit Ten, as recorded in Plat Book 4, Pages 76-A through 76-N, a total of 0.18 acres, more or less, located in Section 11, Township 42 South, Range 23 East, in Commission District II.

**Staff Presentation**

**Steven Ellis, Planner II**, presented the findings and analysis of the petition with a recommendation of *Approval*, based on the reasons stated in the staff report dated March 19, 2012. He noted that the applicant owns the property on both sides of the parcel to be vacated; he also discussed the question of whether or not the vacation would lead to a landlocked parcel, which had been raised by a Zoning reviewer. Further research indicated that the same owner owns an adjacent property with access to US 41, so staff's position is that there is continued access to the property. **Chair Hess** suggests he add that to his staff report since his report at this point just includes the issue having been raised, but not the research that settles the issue.

**Questions for Staff**

*None.*

**Applicant's Presentation:**

**Michael P. Haymans, Esq.**, applicant's agent, spoke in support of the petition, and clarified the issue of whether a landlocked parcel would be created. He also mentioned the owner's intention to file a comp plan/rezoning for this area in the future, seeking to develop to something other than

the standard "strip" development on US 41, which the consolidation of the owner's parcels will facilitate.

**Public Input**

None.

- **Mr. Marshall** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

**Discussion**

**Mr. Ellis** noted that the single condition of approval would be to ask for an FPL easement; **Mr. Haymans** concurred that the condition was acceptable to the applicant.

**Recommendation**

**Mr. Gravesen** moved that application **SV-12-02-02** be forwarded to the Board of County Commissioners with a recommendation of *Approval with one condition*, based on the findings and analysis in the staff report dated March 19, 2012, along with the evidence presented at today's meeting, seconded by **Mr. Marshall** and carried by a unanimous vote.

**Mr. Haymans** took the opportunity to give a citizen comment in response to Mr. Gravesen's earlier comments about property in a street vacation not going half and half to each adjacent property owner if it was on a section line. **Mr. Haymans** noted that this may be appropriate and possible if the parcel to be vacated was on an outside boundary of a subdivision; in that case, the adjoining property owner, not being the developer of the subdivision, would get all the vacated property. There is no way to "direct" this; it is an outcome as a matter of law, as distinguished from a "policy" where other arrangements might be stipulated as the result of a negotiation between the interested parties.

**Z-11-11-22-TDU**

**Quasi-Judicial**

**Commission District II**

An Ordinance pursuant to Section 125.66, Florida Statutes, amending the Charlotte County Zoning Atlas from Agriculture Estates (AE) to Planned Development (PD), for property located north of the Lee County Line, south of Zemel Road, east of Tamiami Trail (US 41) and west of I-75, in the South County area; containing 332± acres; Commission District II; Petition No. Z-11-11-22-TDU; Applicant: Harper Property Holdings, LLC / McNew Property Holdings, LLC; providing an effective date.

**Staff Presentation**

**Jie Shao, Planner III**, presented the findings and analysis of the petition with a recommendation of *Approval with conditions "a" through "u"*, based on the reasons stated in the staff report dated March 27, 2012. She discussed the Open Space Management Plan that would be part of this development, as well as the Conservation Easement being drafted by the applicants' attorney. She noted that the applicant agreed with all conditions except condition "f.i.4)" which was still being negotiated and was expected to be resolved.

**Questions for Staff**

None.

**Applicant's Presentation**

**Geri L. Waksler, Esq.**, applicant's agent, spoke in support of the petition, giving detail about various aspects of the site plan and intended development, provision of utilities and the like. She noted the objection to the condition regarding the limitations on the ACLF as well as the continued negotiation over certain language in the Open Space Management Plan, stating that she was confident staff and applicant could find a solution on these issues.

**Public Input**

None.

- **Mr. Marshall** moved to close the public hearing, second by **Mr. Gravesen** with a unanimous vote.

**Discussion**

**Chair Hess** stated that she found the matter to be consistent with the intentions of the Comprehensive Plan for Rural Community Mixed Use.

**Recommendation**

**Mr. Gravesen** moved that application **Z-11-11-22-TDU** be forwarded to the Board of County Commissioners with a recommendation of *Approval with conditions "a" through "u"*, based on the findings and analysis in the staff report dated March 27, 2012, along with the evidence presented at today's meeting and the finalized conditions as mentioned by staff and applicant's agent, second by **Mr. Marshall** and carried by a unanimous vote.

There being no further business to come before the Board, meeting was adjourned at 2:35 p.m.